HOUSE BILL No. 1066

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-13; IC 6-3.1-26.

Synopsis: Project location for tax credit eligibility. Relaxes restrictive provisions in: (1) the economic development for a growing economy (EDGE) tax credit; and (2) the Hoosier business investment tax credit; that require a taxpayer to maintain operations at the particular location where the investment is made to allow the taxpayer to relocate operations to any site in Indiana. Makes related changes.

Effective: January 1, 2010.

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January 7, 2009, read first time and referred to Committee on Ways and Means.

Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1066

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.1-13-15, AS AMENDED BY P.L.197-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 15. This section applies to an application proposing a project to create new jobs in Indiana. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that all of the following conditions exist:

(1) The applicant's project will create new jobs that were not jobs previously performed by employees of the applicant in Indiana.

(2) The applicant's project is economically sound and will benefit the people of Indiana by increasing opportunities for employment in Indiana and strengthening the economy of Indiana.

(3) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project and not receiving the tax credit will result in the applicant not creating new jobs in Indiana.

(4) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the

best available data.

(5) The credit **award** is not prohibited by section 16 of this chapter.

(6) If the business is located in a community revitalization enhancement district established under IC 36-7-13 or a certified technology park established under IC 36-7-32, the legislative body of the political subdivision establishing the district or park has adopted an ordinance recommending the granting of a credit amount that is at least equal to the credit amount provided in the agreement.

SECTION 2. IC 6-3.1-13-15.5, AS AMENDED BY P.L.137-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 15.5. This section applies to an application proposing to retain existing jobs in Indiana. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that all the following conditions exist:

(1) The applicant's project will retain existing jobs performed by the employees of the applicant in Indiana.

(2) The applicant is engaged in research and development, manufacturing, or business services, according to the NAICS Manual of the United States Office of Management and Budget.

(3) The average compensation (including benefits) provided to the applicant's employees during the applicant's previous fiscal year exceeds the greater of the following:

(A) If there is more than one (1) business in the same NAICS industry sector as the applicant's business in the county in which the applicant's business is located, the average compensation paid during that same period to all employees working in that NAICS industry sector in that county multiplied by one hundred five percent (105%).

(B) If there is more than one (1) business in the same NAICS industry sector as the applicant's business in Indiana, the average compensation paid during that same period to all employees working in that NAICS industry sector throughout Indiana multiplied by one hundred five percent (105%).

(C) The compensation for that same period corresponding to the federal minimum wage multiplied by two hundred percent (200%).

(4) The applicant employs at least thirty-five (35) employees in Indiana.

(5) The applicant has prepared a plan for the use of the credits

under this chapter for:

(A) investment in facility improvements or equipment and machinery upgrades, repairs, or retrofits; or

(B) other direct business related investments, including but not limited to training.

(6) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project, and not receiving the tax credit will increase the likelihood of the applicant reducing jobs in Indiana.

(7) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

(8) The applicant's business and project are economically sound and will benefit the people of Indiana by increasing or maintaining opportunities for employment and strengthening the economy of Indiana.

(9) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed local incentives with respect to the retention of jobs in an amount determined by the corporation. For purposes of this subdivision, local incentives include, but are not limited to, cash grants, tax abatements, infrastructure improvements, investment in facility rehabilitation, construction, and training investments.

(10) The credit **award** is not prohibited by section 16 of this chapter.

(11) If the business is located in a community revitalization enhancement district established under IC 36-7-13 or a certified technology park established under IC 36-7-32, the legislative body of the political subdivision establishing the district or park has adopted an ordinance recommending the granting of a credit amount that is at least equal to the credit amount provided in the agreement.

SECTION 3. IC 6-3.1-13-16, AS AMENDED BY P.L.4-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 16. ~~A person is~~ **The corporation may** not ~~entitled to claim the~~ **make a new** credit ~~provided by~~ **award under** this chapter for any jobs that ~~the person~~ **an applicant** relocates from one (1) site in Indiana to another site in Indiana. **However, a taxpayer's eligibility to claim the tax credit provided by this chapter under an existing credit award is not impaired solely because the taxpayer relocates jobs from one (1) site in Indiana to another site in Indiana. If a credit award agreement entered into before December**

31, 2009, between the corporation and a taxpayer contains a provision that requires the taxpayer to maintain operations at a particular location in Indiana, the corporation shall amend the credit award agreement as necessary to require only that the taxpayer maintain operations in Indiana. Determinations under this section shall be made by the corporation.

SECTION 4. IC 6-3.1-13-19, AS AMENDED BY P.L.197-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 19. In the case of a credit awarded for a project to create new jobs in Indiana, the corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the following:

(1) A detailed description of the project that is the subject of the agreement.

(2) The duration of the tax credit and the first taxable year for which the credit may be claimed.

(3) The credit amount that will be allowed for each taxable year.

(4) A requirement that the taxpayer shall maintain operations ~~at the project location~~ **in Indiana** for at least two (2) years following the last taxable year in which the applicant claims the tax credit or carries over an unused part of the tax credit under section 18 of this chapter. A taxpayer is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.

(5) A specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee.

(6) A requirement that the taxpayer shall annually report to the corporation the number of new employees who are performing jobs not previously performed by an employee, the new income tax revenue withheld in connection with the new employees, and any other information the director needs to perform the director's duties under this chapter.

(7) A requirement that the director is authorized to verify with the appropriate state agencies the amounts reported under subdivision (6), and after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(8) A requirement that the taxpayer shall provide written notification to the director and the corporation not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(9) Any other performance conditions that the corporation determines are appropriate.

SECTION 5. IC 6-3.1-13-19.5, AS AMENDED BY P.L.197-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 19.5. (a) In the case of a credit awarded for a project to retain existing jobs in Indiana, the corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the following:

(1) A detailed description of the business that is the subject of the agreement.

(2) The duration of the tax credit and the first taxable year for which the credit may be claimed.

(3) The credit amount that will be allowed for each taxable year.

(4) A requirement that the applicant shall maintain operations ~~at the project location~~ **in Indiana** for at least two (2) years following the last taxable year in which the applicant claims the tax credit or carries over an unused part of the tax credit under section 18 of this chapter. An applicant is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.

(5) A requirement that the applicant shall annually report the following to the corporation:

(A) The number of employees who are employed in Indiana by the applicant.

(B) The compensation (including benefits) paid to the applicant's employees in Indiana.

(C) The amount of the:

(i) facility improvements;

(ii) equipment and machinery upgrades, repairs, or retrofits; or

(iii) other direct business related investments, including training.

(6) A requirement that the applicant shall provide written notification to the director and the corporation not more than thirty (30) days after the applicant makes or receives a proposal that would transfer the applicant's state tax liability obligations to a successor taxpayer.

(7) Any other performance conditions that the corporation determines are appropriate.

(b) An agreement between an applicant and the corporation must be submitted to the budget committee for review and must be approved by the budget agency before an applicant is awarded a credit under this chapter for a project to retain existing jobs in Indiana.

SECTION 6. IC 6-3.1-26-18, AS AMENDED BY P.L.1-2006, SECTION 143, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 18. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that all the following conditions exist:

(1) The applicant's project will raise the total earnings of employees of the applicant in Indiana.

(2) The applicant's project is economically sound and will benefit the people of Indiana by increasing opportunities for employment and strengthening the economy of Indiana.

(3) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project and not receiving the tax credit will result in the applicant not raising the total earnings of employees in Indiana.

(4) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

(5) The credit **award** is not prohibited by section 19 of this chapter.

(6) The average wage that will be paid by the taxpayer to its employees (excluding highly compensated employees) at the location after the credit is given will be at least equal to one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

SECTION 7. IC 6-3.1-26-19, AS AMENDED BY P.L.4-2005, SECTION 108, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 19. ~~A person is~~ **The corporation may** not ~~entitled to claim the~~ **make a new** credit **award** ~~provided by~~ **under** this chapter for any jobs that ~~the person~~ **an applicant** relocates from one (1) site in Indiana to another site in Indiana. **However, a taxpayer's eligibility to claim the tax credit provided by this chapter under an existing credit award is not impaired solely because the taxpayer relocates jobs from one (1) site in Indiana to another site in Indiana. If a credit award agreement entered into before December 31, 2009, between the corporation and a taxpayer contains a provision that requires the taxpayer to maintain operations at a particular location in Indiana, the corporation shall amend the credit award agreement as necessary to require only that the taxpayer maintain operations in Indiana.** Determinations under this section shall be made by the corporation.

SECTION 8. IC 6-3.1-26-21, AS AMENDED BY P.L.4-2005, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 21. The corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

(1) A detailed description of the project that is the subject of the agreement.

(2) The first taxable year for which the credit may be claimed.

(3) The amount of the taxpayer's state tax liability for each tax in the taxable year of the taxpayer that immediately preceded the first taxable year in which the credit may be claimed.

(4) The maximum tax credit amount that will be allowed for each taxable year.

(5) A requirement that the taxpayer shall maintain operations ~~at the project location~~ **in Indiana** for at least ten (10) years during the term that the tax credit is available.

(6) A specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee.

(7) A requirement that the taxpayer shall annually report to the corporation the number of new employees who are performing jobs not previously performed by an employee, the average wage of the new employees, the average wage of all employees ~~at the location where the qualified investment is made,~~ **in Indiana** and any other information the director needs to perform the director's duties under this chapter.

(8) A requirement that the director is authorized to verify with the appropriate state agencies the amounts reported under subdivision (7), and that after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(9) A requirement that the taxpayer shall pay an average wage to all its employees other than highly compensated employees in each taxable year that a tax credit is available that equals at least one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

(10) A requirement that the taxpayer will keep the qualified investment property that is the basis for the tax credit in Indiana for at least the lesser of its useful life for federal income tax purposes or ten (10) years.

(11) A requirement that the taxpayer will maintain ~~at the location where the qualified investment is made~~ during the term of the tax

credit a total payroll **in Indiana** that is at least equal to the payroll level that existed before the qualified investment was made.

(12) A requirement that the taxpayer shall provide written notification to the director and the corporation not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(13) Any other performance conditions that the corporation determines are appropriate.

SECTION 9. [EFFECTIVE JANUARY 1, 2010] **(a) IC 6-3.1-13-15, IC 6-3.1-13-15.5, IC 6-3.1-13-16, IC 6-3.1-13-19, and IC 6-3.1-13-19.5, all as amended by this act, apply only to taxable years beginning after December 31, 2009.**

(b) IC 6-3.1-26-18, IC 6-3.1-26-19, and IC 6-3.1-26-21, all as amended by this act, apply only to taxable years beginning after December 31, 2009.

(c) This SECTION expires December 31, 2011.